S.B. CIVIL WRIT PETITION NO.4098/2007.

Milkh Raj Vs. State of Rajasthan & Anr.

Date of Order :: 10th September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Ramandeep Singh Sidhu, for the petitioner.

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The petitioner, working as Patwari with the Water Resources Department, has been put under suspension by the impugned order dated 14.05.2007 (Annex.7) for the reason that in a criminal case cognizance has been taken against him for offences under Sections 447, 427, 323 IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner seeks to question the legality of the said order dated 14.05.007 by way of this writ petition.

Learned counsel submits that the petitioner has been placed under suspension in the purported exercise of powers under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 ('the CCA Rules' for short) only on the basis of the fact that cognizance has been taken by the Court for the alleged offences but as no charge has been framed yet, it cannot be said that the trial has commenced; and further, that the matter having been taken up on a private complaint, no any investigation was pending. Therefore, learned counsel contends that the petitioner could not have been put under suspension under Rule 13 of the CCA Rules. Learned counsel

has relied upon a decision of the learned Single Judge of this Court in the case of Deen Mohammed Vs. The State of Rajasthan & Anr.: 1991 (1) WLC 239. The submission remains wholly meritless and this writ petition remains totally bereft of substance.

The fact that the learned Magistrate has taken cognizance for the offences above-mentioned against the petitioner along with other persons is not in dispute; and is apparent from the order dated 06.10.2006 (Annex.6).

The relevant part of Rule 13 of the CCA Rules reads thus:

> "The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the government in that behalf may place a Government Servant under suspension:
> (a) where a disciplinary proceeding against him is contemplated or is pending, or
> (b) where a case against him in respect of any criminal offence is under investigation or trial:
> xxx xxx xxx "

A bare look at the Rule aforesaid makes it clear that a Government servant could be put under suspension where a case against him in respect of any criminal offence is under investigation or trial. In its contextual meaning, the expression "investigation" occurring in Rule 13 cannot be taken limited to the police investigation as contemplated under Chapter XII of the Code of Criminal Procedure, 1973 ('the Code' for short); and the inquiry by the Magistrate under Chapter XV of the Code cannot be taken to have been excluded from the purview of the aforesaid

provisions of Rule 13 in their true meaning and effect. When a complaint is made to the Magistrate of an offence of which he is authorised to take cognizance, he may postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding; and where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session he shall call upon the complainant to produce all his witnesses and examine them on oath (vide Section 202 of the Code); and by virtue of its Section 204, if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be a warrant case, he may issue a warrant or if he thinks fit a summons, for bringing or causing appearance of the accused; and the proceedings commence before the Magistrate. Looking at the true meaning and operation of Rule 13 of the CCA Rules, this Court is clearly of opinion that it cannot be said that such provisions would not apply in case of complaint to the Magistrate where proceedings are adopted as contemplated by Chapter XV and Chapter XVI of the Code. Cognizance having been already taken against the petitioner for the offences aforesaid, there appears no illegality in exercising of powers under Rule 13 of the CCA Rules.

Reference to the decision in Deen Mohammed's case (supra) appears to be entirely misplaced. In the first place, in the said decision, it is not indicated if the said petitioner regarding whom the learned Single Judge was of opinion that the order of suspension was not sustainable was holding any civil post? The Editor of the said report in its head-note has chosen to refer to Article 311 (2) of the Constitution of India and has stated as if it were a case of suspension 'from service'. However, the text of the order shows that the said decision has been rendered taking the case being squarely covered by a Division Bench decision of this Court; and the ratio of the Division Bench decision so relied upon by the learned Single Judge and as reproduced in paragraph 3 of the said order reads as under:-

> "In Bhagwan's case, admittedly, no charge was framed and the order of suspension passed by the Government by invoking powers under **Section 17 (4A)** was held to be illegal. Following the ratio of the case in Bhagwan Singh's case we are of the opinion that unless a charge is framed, it cannot be said that any case is pending trial against the **petitioner Sarpanch** as in warrant cases, before a Magistrate, the proceedings are only inquiries upto the time when the charge is drawn up, read over and explained to the accused. It is only thereafter that the trial begins."
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> **(emphasis supplied for the context)**

The said Division Bench decision as relied upon by the learned Single Judge in Deen Mohammed's case related obviously to a Sarpanch who was put under suspension under Section 17(4A), obviously of the then existing Rajasthan

Panchayat Act, 1953 that provided, inter alia, of suspension of Sarpanch “against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a court of law”. It appears that an argument was raised before the learned Single Judge that until charge was framed, it could not be said that the criminal proceedings in regard to an offence involving moral turpitude was pending trial. Such requirement is found in Section 17(4A) of the said Rajasthan Panchayat Act, 1953 and not in Rule 13 of the CCA Rules to which the present case relates.

It is rather questionable that as to how the said Editor has chosen to refer to Article 311 (2) of the Constitution of India and has stated it to be a case of suspension 'from service’? Be that as it may, such head-notes deserve to be ignored and suffice it to say that the said case of Deen Mohammed has got absolutely no relevance to the case at hands.

The order of suspension as passed in this case does not appear illegal nor appears unjustified on a prima facie look at the orders passed by the learned Magistrate.

There appears no cause or justification to consider issuance of any writ, order, or direction at the instance of the petitioner.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

Mohan